

1 H.854

2 Introduced by Committee on Natural Resources and Energy

3 Date:

4 Subject: Conservation and development; crimes and criminal procedure;

5 timber trespass

6 Statement of purpose of bill as introduced: This bill proposes to amend the
7 requirements related to timber trespass. The bill clarifies the right of a person
8 to bring a civil action for damages due to the unlawful cutting of trees. The
9 bill would also establish as a crime the unlawful cutting of timber. The bill
10 would repeal Judicial Bureau authority over timber trespass. The bill also
11 repeals the requirement that a timber harvester mark the boundaries of a
12 harvest unit prior to harvest.

13 An act relating to timber trespass

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 ~~Sec. 1. 13 V.S.A. chapter 77 is amended to read:~~

16 CHAPTER 77. TREES AND PLANTS

17 § 3601. DEFINITIONS

18 As used in this chapter:

19 (1) "Diameter breast height" or "DBH" means the diameter of a
20 standing tree at four and one-half feet from the ground.

1 ~~(2) "Harvest" means the cutting, felling, or removal of timber.~~

2 ~~(3) "Harvest unit" means the area of land from which timber will be~~
3 ~~harvested or the area of land on which timber stand improvement will occur.~~

4 ~~[Repealed.]~~

5 ~~(4) "Harvester" means a person, firm, company, corporation, or other~~
6 ~~legal entity that harvests timber. [Repealed.]~~

7 ~~(5) "Landowner" means the person, firm, company, corporation, or~~
8 ~~other legal entity that owns or controls the land or owns or controls the right to~~
9 ~~harvest timber on the land.~~

10 ~~(6) "Landowner's agent" means a person, firm, company, corporation,~~
11 ~~or other legal entity representing the landowner in a timber sale, timber~~
12 ~~harvest, or land management.~~

13 ~~(7) "Stump diameter" means the diameter of a tree stump remaining~~
14 ~~after cutting, felling, or destruction.~~

15 ~~(8) "Forest products" means logs; pulpwood; veneer; bolt wood; wood~~
16 ~~chips; stud wood; poles; pilings; biomass; fuel wood; or bark.~~

17 ~~(9) "Timber" means trees, saplings, bushes, seedlings, shrubs, and~~
18 ~~sprouts from which trees may grow, of every size, nature, kind, and~~
19 ~~description.~~

~~§ 3602. UNLAWFUL CUTTING OF TREES VALUATION OF TREES OR
TIMBER~~

~~(a) Any person who cuts, fells, destroys to the point of no value, or substantially damages the potential value of a tree without the consent of the owner of the property on which the tree stands shall be assessed a civil penalty in the following amounts for each tree over two inches in diameter that is cut, felled, or destroyed who is entitled to damages pursuant to section 3606 of this title may provide an assessment of the value, based upon the kind, condition, location, and use of the timber cut down, destroyed, removed, injured, damaged, or carried away or, in the alternative, may assess the value of the timber as follows:~~

~~(1) if the a tree is no more than six inches in stump diameter or DBH, ~~not more than \$25.00~~ \$100.00;~~

~~(2) if the a tree is more than six inches and not more than ten inches in stump diameter or DBH, ~~not more than \$50.00~~ \$200.00;~~

~~(3) if the a tree is more than 10 inches and not more than 14 inches in stump diameter or DBH, ~~not more than \$150.00~~ \$500.00;~~

~~(4) if the a tree is more than 14 inches and not more than 18 inches in stump diameter or DBH, ~~not more than \$500.00~~ \$1,000.00;~~

~~(5) if the a tree is more than 18 inches and not more than 22 inches in stump diameter or DBH, ~~not more than \$1,000.00~~ \$1,500.00;~~

1 ~~(6) if the a tree is greater than 22 inches in stump diameter or DBH, not~~
2 ~~more than \$1,500.00 \$2,000.00;~~

3 ~~(7) for a bush or shrub, \$50.00.~~

4 ~~(b) In calculating the diameter and number of trees cut, felled, or destroyed~~
5 ~~under this section, a law enforcement officer may rely on a written damage~~
6 ~~assessment completed by a professional arborist or forester.~~

7 ~~§ 3603. MARKING HARVEST UNITS~~

8 ~~A landowner who authorizes timber harvesting or who in fact harvests~~
9 ~~timber shall clearly and accurately mark with flagging or other temporary and~~
10 ~~visible means the harvest unit. Each mark of a harvest unit shall be visible~~
11 ~~from the next and shall not exceed 100 feet apart. The marking of a harvest~~
12 ~~unit shall be completed prior to commencement of a timber harvest. If a~~
13 ~~violation as described in section 3602 of this title occurs due to the failure of a~~
14 ~~landowner to mark a harvest unit, the landowner who failed to mark a harvest~~
15 ~~unit in accordance with the requirements of this subsection shall be assessed a~~
16 ~~civil penalty of not less than \$250.00 and not more than \$1,000.00.~~

17 ~~[Repealed.]~~

18 ~~§ 3604. EXEMPTIONS~~

19 ~~The cutting, felling, or destruction of a tree or the harvest of timber by the~~
20 ~~following is exempt from the requirements of sections 3602, 3603, and 3606 of~~
21 ~~this title:~~

1 ~~(1) The Agency of Transportation conducting brush removal on State~~
2 ~~highways or Agency maintained trails.~~

3 ~~(2) A municipality conducting brush removal subject to the~~
4 ~~requirements of 19 V.S.A. § 904.~~

5 ~~(3) A utility conducting vegetation maintenance within the boundaries~~
6 ~~of the utility's established right of way.~~

7 ~~(4) A harvester harvesting timber that a landowner has authorized for~~
8 ~~harvest within a harvest unit that has been marked by a landowner under~~
9 ~~section 3603 of this title. A landowner who harvests timber on his or her own~~
10 ~~property shall not be a "harvester" for the purposes of this subdivision.~~

11 ~~(5) A railroad conducting vegetation maintenance or brush removal in~~
12 ~~the railroad right of way.~~

13 ~~(6) A licensed surveyor establishing boundaries between abutting~~
14 ~~parcels under 27 V.S.A. § 4. [Repealed.]~~

§ 3604. EXEMPTIONS

The cutting, felling, or destruction of a tree or the harvest of timber by the following is exempt from the requirements of sections 3602, 3603, and 3606 shall not be subject to a civil action under section 3606 of this title or a criminal penalty under section 3606a of this title:

(1) The Agency of Transportation, or its representatives, conducting brush removal on State highways or Agency maintained trails vegetation management.

~~(2) A municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904.~~

~~(3) A utility conducting vegetation maintenance within the boundaries of the utility's established right-of-way.~~

~~(4) A harvester harvesting timber that a landowner has authorized for harvest within a harvest unit that has been marked by a landowner under section 3603 of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision.~~
[Repealed.]

~~(5) A railroad conducting vegetation maintenance or brush removal in the railroad right-of-way management.~~

~~(6) A licensed surveyor establishing boundaries between abutting parcels under 27 V.S.A. § 4.~~

1 § 3606. ~~TREBLE DAMAGES FOR CONVERSION OF TREES OR~~
2 ~~DEFACING MARKS ON LOGS TRESPASS; CIVIL ACTION~~

3 (a) ~~If~~ In addition to any other civil liability or criminal penalty allowed by
4 law, if a person cuts down, fells, destroys, removes, injures, damages, or
5 carries away any ~~tree or trees, brush, or shrubs~~ timber placed or growing for
6 any use or purpose whatsoever, or ~~timber, wood, or underwood~~ forest products
7 standing, lying, or growing belonging to another person, without ~~leave~~
8 permission from the owner of ~~such trees, the timber, wood, or underwood~~ or
9 forest product, or cuts out, alters, or defaces the mark of a log or other valuable

1 ~~timber, in a river or other place forest product, the party injured may recover of~~
2 such person, in an action on this statute, treble damages ~~or for each tree the~~
3 ~~same amount that would be assessed as a civil penalty under section 3602 of~~
4 ~~this title, whichever is greater for the value of the timber or forest product, and~~
5 ~~any damage caused to the land or improvements thereon as a result of such~~
6 ~~action, together with reasonable costs of litigation, including investigation~~
7 ~~costs and attorney's fees. The injured party or landowner may rely on an~~
8 ~~assessment of damages based on the kind, condition, location, and use of the~~
9 ~~timber or forest product by the injured party or landowner, or alternatively,~~
10 ~~may elect to rely on the values established under section 3602 of this title.~~

11 (b) ~~However, if it appears on trial that the defendant acted through mistake,~~
12 ~~or~~ If the defendant in an action brought pursuant to subsection (a) of this
13 section establishes ~~by clear and convincing evidence~~ *by a preponderance of the*
14 *evidence* that he or she had good reason to believe that the ~~trees, timber, wood,~~
15 ~~or underwood~~ or forest products belonged to him or her, or that he or she had a
16 legal right to perform the acts complained of, the plaintiff shall recover single
17 damages only, with costs.

18 (c) ~~For purposes of~~ As used in this section, "damages" shall include any
19 damage caused to the land or improvements thereon as a result of a person
20 cutting, felling, destroying to the point of no value, substantially reducing the
21 potential value, removing, injuring, damaging, or carrying away a ~~trees,~~
22 timber, ~~wood,~~ or forest products without the ~~consent~~ permission of the owner

1 ~~of the property on which the tree stands. If a person cuts down, destroys, or~~
2 ~~carries away a tree or trees placed or growing for any use or purpose~~
3 ~~whatsoever or timber, wood, or underwood standing, lying, or growing~~
4 ~~belonging to another person due to the failure of the landowner or the~~
5 ~~landowner's agent to mark the harvest unit properly, as required under section~~
6 ~~3603 of this title, a cause of action for damages may be brought against the~~
7 ~~landowner.~~

8 § 3606a. TRESPASS; CRIMINAL PENALTY

9 (a) No person shall knowingly or recklessly:

10 (1) cut down, fell, destroy, remove, injure, damage, or carry away any
11 timber or forest product placed or growing for any use or purpose whatsoever,
12 or timber or forest product lying or growing belonging to another person,
13 without permission from the owner of the timber or forest product; or

14 (2) deface the mark of a log, forest product, or other valuable timber in a
15 river or other place.

16 (b) Any person who violates subsection (a) of this section shall:

17 (1) be imprisoned not more than five years or fined not more than
18 \$5,000.00, or both, if the value of the timber or forest product is \$1,000.00 or
19 greater; or

20 (2) be imprisoned not more than one year or fined not more than
21 \$2,000.00, or both, if the value of the timber or forest product is less than
22 \$1,000.00.

~~(b) Any person who violates subsection (a) of this section shall:~~

~~(1) be imprisoned not more than one year or fined not more than \$5,000.00, or both, if the value of the timber or forest product is less than \$1,000.00; or~~

~~(2) be imprisoned not more than two years or fined not more than \$10,000.00, or both, if the value of the timber or forest product is \$1,000.00 or greater.~~

1 Sec. 2. 4 V.S.A. § 1102(b) is amended to read:

2 (b) The Judicial Bureau shall have jurisdiction of the following matters:

3 * * *

4 (21) ~~Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful~~
5 ~~cutting of trees and the marking of harvest units. [Repealed.]~~

6 Sec. 3. EFFECTIVE DATE

7 ~~This act shall take effect on July 1, 2016.~~

Sec. 1. 13 V.S.A. chapter 77 is amended to read:

CHAPTER 77. TREES AND PLANTS

§ 3601. DEFINITIONS

As used in this chapter:

(1) “Diameter breast height” or “DBH” means the diameter of a standing tree at four and one-half feet from the ground.

(2) “Harvest” means the cutting, felling, or removal of timber.

(3) *“Harvest unit” means the area of land from which timber will be harvested or the area of land on which timber stand improvement will occur.*

(4) *“Harvester” means a person, firm, company, corporation, or other legal entity that harvests timber.*

(5) *“Landowner” means the person, firm, company, corporation, or other legal entity that owns or controls the land or owns or controls the right to harvest timber on the land.*

(6) *“Landowner’s agent” means a person, firm, company, corporation, or other legal entity representing the landowner in a timber sale, timber harvest, or land management.*

(7) *“Stump diameter” means the diameter of a tree stump remaining after cutting, felling, or destruction.*

(8) “Forest products” means logs; pulpwood; veneer; bolt wood; wood chips; stud wood; poles; pilings; biomass; fuel wood; or bark.

(9) “Timber” means:

(A) trees of every size, nature, kind, and description; and

(B) sprouts from which trees may grow, seedlings, saplings, bushes, or shrubs that have been planted or cultivated by a person who owns or controls the property where they are located.

§ 3602. UNLAWFUL CUTTING OF TREES VALUATION OF TREES OR
TIMBER

~~(a) Any person who cuts, fells, destroys to the point of no value, or substantially damages the potential value of a tree without the consent of the owner of the property on which the tree stands shall be assessed a civil penalty in the following amounts for each tree over two inches in diameter that is cut, felled, or destroyed who is entitled to damages pursuant to section 3606 of this title or who is entitled to restitution for a violation of section 3606a of this title may provide an assessment of the value, based upon the kind, condition, location, and use of the timber cut down, destroyed, removed, injured, damaged, or carried away or, in the alternative, may assess the value of the timber as follows:~~

~~(1) if the a tree is no more than six inches in stump diameter or DBH, not more than ~~\$25.00~~ \$50.00;~~

~~(2) if the a tree is more than six inches and not more than ten inches in stump diameter or DBH, not more than ~~\$50.00~~ \$100.00;~~

~~(3) if the a tree is more than 10 inches and not more than 14 inches in stump diameter or DBH, not more than ~~\$150.00~~ \$300.00;~~

~~(4) if the a tree is more than 14 inches and not more than 18 inches in stump diameter or DBH, not more than ~~\$500.00~~ \$750.00;~~

~~(5) if the a tree is more than 18 inches and not more than 22 inches in stump diameter or DBH, not more than ~~\$1,000.00~~ \$1,500.00;~~

~~(6) if the a tree is greater than 22 inches in stump diameter or DBH, ~~not~~
~~more than \$1,500.00~~ \$2,000.00;~~

~~(7) for a bush or shrub, \$50.00.~~

~~(b) In calculating the diameter and number of trees cut, felled, or destroyed
under this section, a law enforcement officer may rely on a written damage
assessment completed by a professional arborist or forester.~~

§ 3603. MARKING HARVEST UNITS

~~A As a best management practice, a landowner who authorizes timber
harvesting or who in fact harvests timber ~~shall~~ should clearly and accurately
mark the harvest unit with ~~flagging or other temporary and visible means the~~
~~harvest unit. Each mark of a harvest unit shall be visible from the next and~~
~~shall not exceed 100 feet apart. The marking of a harvest unit shall be~~
~~completed prior to commencement of a timber harvest. If a violation as~~
~~described in section 3602 of this title occurs due to the failure of a landowner~~
~~to mark a harvest unit, the landowner who failed to mark a harvest unit in~~
~~accordance with the requirements of this subsection shall be assessed a civil~~
~~penalty of not less than \$250.00 and not more than \$1,000.00.~~~~

§ 3604. EXEMPTIONS

~~The cutting, felling, or destruction of a tree or the harvest of timber by the
following is exempt from the requirements of sections 3602, 3603, and 3606
shall not be subject to a civil action under section 3606 of this title or a
criminal penalty under section 3606a of this title:~~

~~(1) The Agency of Transportation, or its representatives, conducting brush removal on State highways or Agency-maintained trails vegetation management.~~

~~(2) A municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904.~~

~~(3) A utility conducting vegetation ~~maintenance~~ management within the boundaries of the utility's established right-of-way.~~

~~(4) A harvester harvesting timber that a landowner has authorized for harvest within a harvest unit that has been marked by a landowner under section 3603 of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision.~~
[Repealed.]

~~(5) A railroad conducting vegetation ~~maintenance or brush removal~~ in the railroad right of way management.~~

~~(6) A licensed surveyor establishing boundaries between abutting parcels under 27 V.S.A. § 4.~~

~~§ 3606. TREBLE DAMAGES FOR CONVERSION OF TREES OR~~

~~DEFACING MARKS ON LOGS TRESPASS; CIVIL ACTION~~

~~(a) If In addition to any other civil liability or criminal penalty allowed by law, if a person cuts down, fells, destroys, removes, injures, damages, or carries away any tree or trees, brush, or shrubs timber placed or growing for any use or purpose whatsoever, or timber, wood, or underwood forest products~~

~~standing, lying, or growing belonging to another person, without leave permission from the owner of such trees, the timber, wood, or underwood or forest product, or cuts out, alters, or defaces the mark of a log or other valuable timber, in a river or other place forest product, the party injured may recover of such person, in an action on this statute, treble damages or for each tree the same amount that would be assessed as a civil penalty under section 3602 of this title, whichever is greater for the value of the timber or forest product, and any damage caused to the land or improvements thereon as a result of such action. The injured party or landowner may rely on an assessment of damages based on the kind, condition, location, and use of the timber or forest product by the injured party or landowner, or alternatively, may elect to rely on the values established under section 3602 of this title.~~

~~(b) However, if it appears on trial that the defendant acted through mistake, or If the defendant in an action brought pursuant to subsection (a) of this section establishes by a preponderance of the evidence that he or she had good reason to believe that the trees, timber, wood, or underwood or forest products belonged to him or her, or that he or she had a legal right to perform the acts complained of, the plaintiff shall recover single damages only, with costs.~~

~~(c) For purposes of As used in this section, "damages" shall include any damage caused to the land or improvements thereon as a result of a person cutting, felling, destroying to the point of no value, substantially reducing the~~

~~potential value, removing, injuring, damaging, or carrying away a trees, timber, wood, or forest products without the consent permission of the owner of the property on which the tree timber stands. If a person cuts down, destroys, or carries away a tree or trees placed or growing for any use or purpose whatsoever or timber, wood, or underwood standing, lying, or growing belonging to another person due to the failure of the landowner or the landowner's agent to mark the harvest unit properly, as required under section 3603 of this title, a cause of action for damages may be brought against the landowner.~~

§ 3606a. TRESPASS; CRIMINAL PENALTY

(a) No person shall knowingly or recklessly:

(1) cut down, fell, destroy, remove, injure, damage, or carry away any timber or forest product placed or growing for any use or purpose whatsoever, or timber or forest product lying or growing belonging to another person, without permission from the owner of the timber or forest product; or

(2) deface the mark of a log, forest product, or other valuable timber in a river or other place.

(b) Any person who violates subsection (a) of this section shall:

(1) for a first offense, be imprisoned not more than one year or fined not more than \$20,000.00, or both; or

(2) for a second or subsequent offense, be imprisoned not more than two years or fined not more than \$50,000.00, or both.

Sec. 2. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

** * **

(21) ~~Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units. [Repealed.]~~

Sec. 3 . EFFECTIVE DATE

This act shall take effect on July 1, 2016.